

OCA FILE

6 November 1987
OCA 87-5666

Sen Roth

MEMORANDUM FOR: Director of Personnel

STAT

FROM:

Legislation Division
Office of Congressional Affairs

SUBJECT: Federal Employees' Optional Early Retirement
Act of 1987

1. Senator Roth has requested the views of the Agency on S.42, the Federal Employees' Optional Early Retirement Act of 1987. Senator Roth has requested that we provide our views by 20 November. Attached is a copy of the bill and the request for the Agency's views on the bill.

2. This bill is familiar to the Agency. Senator Roth first introduced the bill in the last Congress, and in early January he re-introduced the bill. There has not been any action on the bill during this session of the Congress.

3. We have opposed the bill in the past because its provision granting early retirement would lead to the exodus of skilled employees who could not be replaced for a period of three years. The provisions of the bill would apply to CIARDS. Although the bill provides the President may exempt certain categories of employees from provisions authorizing early retirement, we have maintained that the waiver provisions are not adequate to protect our work force.

4. I request that your Office review the bill once again and affirm the previous position taken in earlier years on the bill. Please provide your comments by 12 November 1987. These comments will form the basis for a response to Senator Roth. It will be necessary to clear our response with OMB.

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Attachment as
stated

Distribution:
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OCA/Leg (6 November 1987)

STAT

100TH CONGRESS
1ST SESSION

S. 42

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. ROTH introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Federal Employees' Op-
5 tional Early Retirement Act of 1987".

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to reduce Federal Government civilian payrolls
9 in an orderly and voluntary manner;

1 (2) to accommodate the personal plans of certain
2 Federal Government employees who desire to retire
3 but have not satisfied the applicable age and service
4 requirements;

5 (3) to allow current Federal Government employ-
6 ees to retire early in order to avoid possible adverse
7 effects of Federal budgetary conditions; and

8 (4) to provide increased job protection and career
9 opportunities for Federal Government employees, espe-
10 cially women, members of minority groups, and young
11 workers.

12 **SEC. 3. TEMPORARY VOLUNTARY EARLY RETIREMENT AU-**
13 **THORITY.**

14 Section 8336 of title 5, United States Code, is
15 amended—

16 (1) by redesignating subsection (m) as subsection
17 (n); and

18 (2) by inserting after subsection (l) the following
19 new subsection (m):

20 “(m)(1) Except as provided in paragraph (2) of this sub-
21 section, an employee who—

22 “(A) during the 90-day period beginning 60 days
23 after the date of the enactment of the Federal Employ-
24 ees’ Optional Early Retirement Act of 1987, is sepa-

1 rated from the service, except by removal for cause on
2 charges of misconduct or delinquency—

3 “(i) after completing 25 years of service;

4 “(ii) after becoming 50 years of age and
5 completing 20 years of service;

6 “(iii) after becoming 55 years of age and
7 completing 15 years of service; or

8 “(iv) after becoming 57 years of age and
9 completing 5 years of service; and

10 “(B) is not entitled to an annuity under section
11 8337 of this title or subsection (a), (b), (d), (f), (h), or (j)
12 of this section,

13 is entitled to an annuity.

14 “(2) Paragraph (1) of this subsection shall not apply to a
15 bankruptcy judge, a judge of the United States Court of Mili-
16 tary Appeals, or any law enforcement officer, firefighter, or
17 air traffic controller who is not in a supervisory or adminis-
18 trative position, as determined by the Director of the Office
19 of Personnel Management.”.

20 **SEC. 4. COMPUTATION OF ANNUITY.**

21 The first sentence of section 8339(h) of title 5, United
22 States Code, is amended by striking out “or (j)” and inserting
23 in lieu thereof “, (j), or (m)”.

1 SEC. 5. APPLICATION OF AMENDMENTS TO OTHER FEDERAL
2 GOVERNMENT RETIREMENT SYSTEMS.

3 The President shall extend the application of the
4 amendments made by sections 3 and 4—

5 (1) to participants in the Central Intelligence
6 Agency Retirement and Disability System and their
7 survivors under section 292 of the Central Intelligence
8 Agency Retirement Act of 1964 for Certain Employ-
9 ees (50 U.S.C. 403 note);

10 (2) to participants in the Foreign Service Retire-
11 ment and Disability System and their survivors under
12 section 827 of the Foreign Service Act of 1980 (94
13 Stat. 2124; 22 U.S.C. 4067); and

14 (3) if determined appropriate by the President, in
15 like manner to employees of the Executive branch who
16 are participants in any other Federal Government re-
17 tirement system and their survivors.

18 SEC. 6. EXEMPTION FOR ESSENTIAL OCCUPATIONAL CATE-
19 GORIES.

20 (a) IN GENERAL.—An officer or employee in the Exec-
21 utive branch retiring under section 8336(m) of title 5, United
22 States Code (as added by section 3 of this Act), or pursuant
23 to section 5 of this Act is not entitled to an annuity under or
24 pursuant to such section if, immediately before the retire-
25 ment, the officer or employee—

1 (1) is serving in a position in an exempt occupa-
2 tional category,

3 (2) is working on an exempt project, or

4 (3) is serving in a position in an exempt location,
5 designated under subsection (b).

6 (b) EXEMPTION AUTHORITY.—The President or his
7 designee may, for the purposes of this section, designate—

8 (1) as an exempt occupational category any occu-
9 pational category in an Executive agency that is essen-
10 tial for the continuous performance of a critical mission
11 of the Executive agency;

12 (2) as an exempt project any project carried out
13 by an Executive agency that is an essential project in
14 the interests of the Federal Government; and

15 (3) as an exempt location any location at which a
16 responsibility of an Executive agency is carried out if,
17 because of the undesirability of such location, it is diffi-
18 cult to fill employee vacancies at the location by volun-
19 tary transfers of other employees.

20 (c) LIMITATIONS ON AUTHORITY.—(1) A designation
21 under subsection (b) shall be effective for the purposes of this
22 section only if it is made in writing not later than the day
23 before the optional early retirement period commences.

24 (2)(A) The authority provided in subsection (b) may not
25 be exercised in a manner that precludes more than 25 per-

1 cent of the eligible officers and employees in an Executive
2 agency from being entitled to an annuity under section
3 8336(m) of title 5, United States Code, or pursuant to section
4 5 of this Act.

5 (B) For the purpose of subparagraph (A), the term "eli-
6 gible officers and employees" means the officers and employ-
7 ees of the Federal Government who, without regard to sub-
8 section (a), would be entitled, upon separation from Federal
9 Government employment, to an annuity under section
10 8336(m) of title 5, United States Code, or pursuant to section
11 5 of this Act.

12 **SEC. 7. HOLDOVER OF ESSENTIAL EMPLOYEES.**

13 (a) **IN GENERAL.**—(1) An officer or employee in the
14 Executive branch is not entitled to an annuity under section
15 8336(m) of title 5, United States Code (as added by section
16 3(2) of this Act), or pursuant to section 5 of this Act if, imme-
17 diately before separating from Federal Government employ-
18 ment, the officer or employee is serving as an essential em-
19 ployee designated under subsection (b) of this section.

20 (2) An officer or employee of an Executive agency
21 who—

22 (A) separates from Federal Government employ-
23 ment immediately upon the termination of a designa-
24 tion under subsection (b); and

1 (B) during the optional early retirement period,
2 has given such Executive agency appropriate notice of
3 his intention to separate from Federal Government em-
4 ployment under section 8336(m) of title 5, United
5 States Code, or pursuant to section 5 of this Act, as
6 the case may be,
7 shall be entitled to an annuity under or pursuant to such
8 section notwithstanding that the separation becomes effective
9 after the expiration of such period.

10 (b) **HOLDOVER AUTHORITY.**—The head of an Execu-
11 tive agency may designate, for the purposes of this section,
12 any officer or employee in such Executive agency as essential
13 for (1) the continuous progress of a critical project under the
14 responsibility of the Executive agency, or (2) the continuous
15 performance of a critical responsibility assigned to such offi-
16 cer or employee by the Executive agency.

17 (c) **LIMITATION ON AUTHORITY.**—A designation under
18 subsection (b) may not be effective for more than 6 months.

19 **SEC. 8. LIMITATION ON REPLACEMENT OF RETIREES.**

20 (a) **IN GENERAL.**—Notwithstanding any other provision
21 of law, except as provided in subsection (b), (c), (d), (e), or (f),
22 an appointment may not be made to a position of civilian
23 employment in the Executive branch on any day during the
24 hiring limitation period, unless the full-time employee equiva-
25 lent of the total number of civilian employees in the Execu-

1 tive branch (other than the United States Postal Service and
2 the Postal Rate Commission) after such appointment on such
3 day does not exceed the maximum authorized full-time em-
4 ployee equivalent number determined for such day, as provid-
5 ed in subsection (h)(2).

6 (b) WAIVER.—(1) The President or his designee may
7 waive the application of subsection (a) in the case of a posi-
8 tion or a category of positions in the Executive branch if the
9 President (or his designee) determines that—

10 (A) the position or positions are essential for the
11 performance of an Executive responsibility; or

12 (B) the estimated aggregate cost of such position
13 or positions during the hiring limitation period does not
14 exceed the estimated aggregate amount of user fees
15 that will be collected by the Federal Government for
16 services performed under a Federal Government pro-
17 gram or programs during such period by an employee
18 in such position or employees in such positions.

19 (2) The President (or his designee) may not exercise the
20 waiver authority provided in paragraph (1) in a manner that
21 results in increased pay and other personnel costs in any Ex-
22 ecutive agency that exceed the amount of the cost savings
23 which result from the implementation of this Act and the
24 amendments made by this Act in the case of such Executive
25 agency.

1 (c) INAPPLICABILITY OF LIMITATION TO THE POSTAL
2 SERVICE AND THE POSTAL RATE COMMISSION.—Subsec-
3 tion (a) does not apply to positions in the United States
4 Postal Service or under the Postal Rate Commission.

5 (d) INAPPLICABILITY OF LIMITATION TO CERTAIN
6 REINSTATEMENTS.—Subsection (a) does not apply in the
7 case of an individual who is reinstated to a position of em-
8 ployment the individual formerly held in the Executive
9 branch by order of a court of the United States having juris-
10 diction to issue such order or by reason of an action of the
11 Merit Systems Protection Board or the Special Counsel of
12 the Merit Systems Protection Board authorized by law.

13 (e) INAPPLICABILITY OF LIMITATION TO CERTAIN
14 TRANSFERS.—Subsection (a) does not prohibit the transfer of
15 employees in the Executive branch for the purpose of filling a
16 vacancy in an Executive branch position.

17 (f) INAPPLICABILITY OF LIMITATION DURING A
18 PERIOD OF WAR OR NATIONAL EMERGENCY.—Subsection
19 (a) shall not apply during a period of war declared by the
20 Congress or a period of national emergency declared by the
21 Congress or the President.

22 (g) LIMITATION ON PROCUREMENT OF PERSONAL
23 SERVICES.—The President shall take appropriate action to
24 ensure that there is no increase in the procurement of person-
25 al services by contract by reason of the enactment of this

1 section except in cases in which it is to the financial advan-
2 tage of the Federal Government to increase the procurement
3 of such services.

4 (h) DEFINITIONS.—For the purposes of this section—

5 (1) the term “employee” has the same meaning as
6 provided in section 2105 of title 5, United States
7 Code;

8 (2) the term “maximum authorized full-time em-
9 ployee equivalent number” means the excess of—

10 (A) the full-time employee equivalent number
11 that describes the total number of civilian employ-
12 ees employed in positions in the Executive branch
13 (other than the United States Postal Service and
14 the Postal Rate Commission) on the day before
15 the optional early retirement period commences,
16 over

17 (B) the full-time employee equivalent number
18 that describes the total number of—

19 (i) such employees who, on or before
20 the day for which the maximum authorized
21 number is computed, have retired during
22 such period entitled to an annuity under sub-
23 chapter III of chapter 83 of title 5, United
24 States Code, or any other Federal Govern-

1 ment retirement system for officers and em-
2 ployees of the Federal Government; and

3 (ii) such employees who, on or before
4 such day, have retired after such period enti-
5 tled to such an annuity as provided in section
6 7(a)(2) of this Act; and

7 (3) the term "hiring limitation period" means the
8 period beginning on the date 60 days after the date of
9 the enactment of this Act and ending at the end of the
10 third fiscal year which begins on or after the first day
11 of such period.

12 **SEC. 9. REGULATIONS.**

13 The President or his designee may prescribe regulations
14 to carry out sections 6, 7, and 8.

15 **SEC. 10. LIMITATION ON USE OF SAVINGS.**

16 (a) **IN GENERAL.**—(1) None of the budget authority and
17 outlays saved in any fiscal year by reason of the reduced pay
18 and other personnel costs resulting from the implementation
19 of this Act and the amendments made by this Act may be
20 obligated or expended for any purpose.

21 (2) The total amount of budget authority and outlays
22 saved in any fiscal year (as described in paragraph (1)) shall
23 be credited against any amount of pay and other personnel
24 costs required to be sequestered in such fiscal year under the

1 Balanced Budget and Emergency Deficit Control Act of
2 1985 (Public Law 99-177).

3 (b) AUDITS.—The Comptroller General of the United
4 States may audit the records of any agency of the Federal
5 Government to determine the level of compliance with the
6 requirements of subsection (a).

7 (c) NOTICE OF NONCOMPLIANCE.—The Comptroller
8 General of the United States shall notify Congress, in writ-
9 ing, of each noncompliance with the requirements of subsec-
10 tion (a).

11 **SEC. 11. PROGRAM REPORT.**

12 (a) IN GENERAL.—Not later than one year after the
13 first day of the optional early retirement period, the Director
14 of the Office of Personnel Management shall transmit to Con-
15 gress a report containing an evaluation of the optional early
16 retirement program and the limitation on replacement of re-
17 tirees provided in this Act.

18 (b) CONTENTS OF REPORT.—The report under subsec-
19 tion (a) shall include the following matters:

20 (1) The number of employees who have retired
21 under the optional early retirement program, stated by
22 employing agency, by age group of the retirees, and by
23 grade or other position classification of the retirees.

24 (2) The number and description of the exempt oc-
25 cupational categories, projects, and locations designat-

1 ed under section 6(b) and the reasons such categories,
2 projects, and locations have been so designated.

3 (3) The number of employees who have been des-
4 ignated as essential employees under section 7(b) and
5 the reasons such employees have been so designated.

6 (4) The number of employees appointed under the
7 waiver authority provided in section 8(b) (stated as a
8 full-time employee equivalent number) and the reasons
9 for the appointments.

10 (5) The amount of the savings in pay and other
11 personnel costs that have resulted, before the date of
12 the report, from the implementation of this Act and the
13 amendments made by this Act.

14 (c) ADMINISTRATIVE PROVISION.—The Director of the
15 Office of Personnel Management may obtain from any agency
16 of the Federal Government such information as the Director
17 determines necessary to prepare the report required by sub-
18 section (a).

19 **SEC. 12. DEFINITIONS.**

20 For purposes of this Act—

21 (1) the term “Executive agency” has the same
22 meaning provided in section 105 of title 5, United
23 States Code, and includes the military departments
24 specified in section 102, but does not include—

25 (A) the United States Postal Service; and

1 (B) the Postal Rate Commission; and
2 (2) the term "optional early retirement period"
3 means the 90-day period provided in section 8336(m)
4 of title 5, United States Code, or pursuant to section 5
5 of this Act.

6 **SEC. 13. REVISIONS IN BUDGET ALLOCATIONS AND AGGREGATES.**
7

8 (a) **REPORTS BY COMMITTEES ON THE BUDGET.—**
9 Upon the enactment of this Act, the Committees on the
10 Budget of the Senate and the House of Representatives shall
11 report to their respective Houses revised allocations, pursu-
12 ant to section 302(a) of the Congressional Budget Act of
13 1974, and revised budget aggregates to carry out this Act
14 and the amendments made by this Act.

15 (b) **REPORTS BY OTHER COMMITTEES OF CON-**
16 **GRESS.—**Upon the reporting of revised allocations under sub-
17 section (a), the appropriate committees of the Senate and the
18 House of Representatives shall report revised allocations,
19 pursuant to section 302(b) of the Congressional Budget Act
20 of 1974, to carry out this Act and the amendments made by
21 this Act.

22 (c) **TREATMENT OF REPORTED REVISIONS.—**Revised
23 allocations and budget aggregates reported under this section
24 shall be considered for the purposes of the Congressional
25 Budget Act of 1974 as aggregates contained in and alloca-

15

1 tions pursuant to S. Con. Res. 120 (99th Congress, Second
2 Session), the concurrent resolution on the budget for fiscal
3 year 1987.

○

LAWTON CHILES, FLORIDA
SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

Executive Registry

87-4749X

October 28, 1987

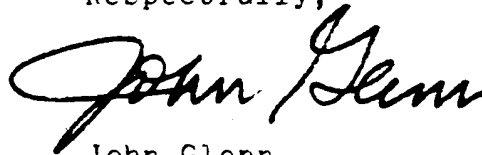
The Honorable William H. Webster
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Webster:

The Committee herewith submits to you the enclosed bill, S. 42, upon which the Committee would appreciate a prompt report, together with such comment as you may desire to make. Your response by Friday, November 20, will be greatly appreciated.

Will you kindly transmit your reply in triplicate?

Respectfully,



John Glenn
Chairman

Enclosure



**CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515**

October 7, 1987

The Honorable William V. Roth, Jr.
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator:

As you requested, the Congressional Budget Office has estimated the potential budgetary impact of a bill, identified as the Federal Employees' Optional Early Retirement Act of 1987, as measured against the CBO baseline used in the concurrent budget resolution for fiscal year 1988. During the three-month period starting 60 days after enactment, the bill would allow certain federal civilian employees to retire under relaxed requirements for minimum age and years of service. The bill also would reduce total federal civilian employment to the extent that workers retire, whether under provision of current law or the proposed bill, during the three-month period.

CBO estimates that enactment of the bill would increase direct spending through fiscal year 1992 by some \$2.1 billion. This includes \$1.3 billion in new federal retirement payments and about \$0.8 billion for losses of employee contributions for deferred compensation such as life insurance and retirement benefits. To offset these costs, the bill seeks to curtail the size of the federal civilian work force, and thereby to reduce government payroll expenditures by an estimated \$5.2 billion through 1992. But there is no guarantee that future appropriation levels—and thus budgetary costs—would be reduced accordingly.

Funds for federal employee salaries are appropriated on an annual basis along with funds appropriated for other categories of expenditure. Although the bill is designed to reduce federal employment and lower government spending, Congress may choose a different course of action. The net budgetary effect is contingent upon subsequent actions taken by the Congress.

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Payments to Retirees

The bill would increase direct federal spending by an estimated \$1.3 billion over the 1988-1992 period for payments to early retirees of their Civil Service Retirement (CSR) benefits and unused annual leave. For those employees who accelerate their retirement, unused leave payments are assumed to average one-month's pay. In addition, about 50 percent of the accelerated group is assumed to elect reductions in future annuity payments in order to receive lump-sum payments that average some \$19,000 per person. The possibility of higher administrative costs for processing the surge in new retirements is not considered.

Based on information from the Office of Personnel Management, some 430,000 federal employees would become eligible to draw an immediate CSR pension during the early retirement period. The estimated increase in direct spending assumes that 25 percent of this group will not be given the early retirement option because they are in critical positions, missions, or locations. Costs to the federal government would be higher if the option remains open to all positions. It is difficult to estimate the portion of eligible employees that would decide to retire early if the bill were enacted. Approximately 40 percent of those eligible are age 55 and over. The estimate assumes that 25 percent of this group would take advantage of the retirement option and accelerate their retirement plans. Under current law, most of this group would have retired in 1991 or beyond. The remaining 60 percent of the eligible pool has an average age of 50 with 28 years of federal service. The estimate assumes that 5 percent of the younger group would elect the early retirement benefits, even though the earned annuity is reduced by 2 percent for each year under age 55. In taking the two groups together, we estimate that nearly 10 percent or about 42,000 of the eligible employees would opt for early retirement.

Reductions in Employee Contributions

Reductions in mandatory as well as voluntary employee contributions for deferred benefits programs would accompany individual's decisions to retire early and would increase government costs through 1992 by an estimated \$0.8 billion. These include mandatory contributions for CSR and Social Security benefits as well as voluntary contributions for the government-sponsored life insurance program and thrift savings plan.

This estimate is consistent with CBO's February baseline which treats the transactions of the Federal Employees' Thrift Savings Fund as on-budget activities. If these transactions were excluded from budget totals, the bill's

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direct spending costs through 1992 would change slightly, increasing by less than \$0.1 billion. Following the recommendation of the General Accounting Office, CBO's August baseline excludes the transactions of the Thrift Savings Fund from the budget.

Employment Reductions

The President currently exercises broad powers to control the size of the federal civilian work force. They are carried out as part of the budget process and usually entail ceilings on the number of full-time equivalent employees allowed each agency during a given year. Since 1982, the Congress has renewed the yearly prohibition on the use of any "man-year" constraints or limitations in managing the civilian work force at the Department of Defense. By overruling this prohibition, the bill would broaden existing authority to limit the size of the federal work force.

Section 8 of the bill would institute an additional mechanism to reduce the number of federal civilian employees. In particular, it would require the President or his designee to impose a work force ceiling for each agency that declines by the number of employees who retire during the three-months that pension eligibility is relaxed. Although the ceilings would continue for three full years, the President could exempt certain positions determined "essential for the performance of an Executive responsibility." But the maximum number of exemptions for each agency is 10 percent of the vacancies that result from CSR employees retiring during the three-month period ending April 1988.

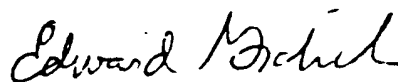
If no exemptions to government hiring limitations were granted, employment in nonpostal agencies could decline by more than two percent or about 48,000 jobs during the three months ending April 1, 1988. In addition to the employment reduction of 32,000 due to accelerated retirements, some 16,000 other positions would not be filled due to individuals retiring under current CSR old-age and disability provisions. (This assumes that 25 percent of the employees retiring during the three-month period work for the U.S. Postal Service or Postal Rate Commission and therefore their positions could be refilled.) Assuming the Administration grants the maximum number of exemptions and using an average 1988 salary of about \$20,000 for each new hire precluded under the bill's provisions, the bill could lower federal payroll levels over the 1988-1992 period by \$5.2 billion. (This estimate assumes budgetary resources are not diverted to expanded use of overtime, that managers do not accelerate efforts to use contracting out where financially advantageous, and that agencies will begin to fill the vacancies resulting from the bill's enactment at the end of the hiring limitation period.) However, the realization of any outlay savings remains contingent upon subsequent appropriation actions taken by the Congress.

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The possible effect of the bill's employment cutbacks on the level and quality of government services is uncertain, and the cost and magnitude of such impacts cannot be quantified. Even with the 10 percent exemption provision, effective and efficient administration of some defense and nondefense programs could be impaired.

With best wishes,

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward M. Gramlich".

Edward M. Gramlich
Acting Director